

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 67-14979

Priority: October 20, 2008

Maximum Diversion Volume: 18.0 AF

This is to certify, that CITY OF WEISER
55 W IDAHO ST
WEISER ID 83672

has applied for a permit to appropriate water from:

Source: GROUND WATER

Tributary: WEISER RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL VOLUME</u>
RECREATION STORAGE	01/01 to 12/31	18.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L1 (SE1/4SW1/4) Sec. 32, Twp 11N, Rge 05W, B.M., WASHINGTON County

PLACE OF USE: RECREATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
11N 05W 32												X					
												L1					

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 30, 2010**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. The pond established by storage of water under this right shall not exceed a total capacity of 12 af. This right authorizes 6 af annually to replace evaporation losses from the pond.
5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 67 Weiser River Water District.
6. Recreation use is for a community fishing pond.

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7. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 15th day of April, 2009.


JOHN WESTRA, Western Regional Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

April 16, 2009

CITY OF WEISER
55 W IDAHO ST
WEISER ID 83672

RE: Permit No. 67-14979

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-334-2190.

Sincerely,

Handwritten signature of John Westra in cursive script.

John Westra

Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

67-14979

**CITY OF WEISER
55 W IDAHO ST
WEISER ID 83672**



**Jean Hersley
Office Specialist II**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: April 13, 2009

RE: Application 67-14979 Conditions of Approval

The City of Weiser wants to excavate a small shallow ground water pond next to the Weiser River near the mouth of the river. The only nearby surface water diversion is the City's irrigation right from the river.

Due to its location and minor amount of water, this project is not expected to impact any other surface or ground water rights regulated by the Weiser River Watermaster.

Because of the details of the proposed development, several typical conditions of approval are not applicable as follows:

- Water district conditions R43, R02, 01P or 086 – There is nothing for the Watermaster to measure or to physically adjust since the project is simply an excavated pond site without inflow or outflow.
- Storage conditions 18B, 18C.
- Minimum stream flow condition WB9 – There is not a practical way to implement this condition for downstream msf rights nos. 3-6 thru 3-8 on the Snake River (Weiser, Johnson Bar, Lime Point). The pond will remain "subject to all prior rights." Probably that standard condition adequately covers msf issues.

The Watermaster did not send her response to the request for comments. That is acceptable under current practices (no reply means no problems).

APPROVING THE APPLICATION

Label upper right of first page - Maximum Diversion Volume: 18 AF

Recommended Conditions of Approval

- Allow 1 year to file proof of beneficial use.

- Subject to all prior water rights.
- 26A
- The pond established by storage of water under this right shall not exceed a total capacity of 12 af. This right authorizes 6 af annually to replace evaporation losses from the pond.
- R05 ... Water District No. 67, Weiser River.
- 121
- Recreation use is for a community fishing pond.

No 3-9

AFFIDAVIT OF PUBLICATION

RECEIVED

APR 08 2009

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO)
County of Washington) ss.

Sarah Boles, being duly sworn,
deposes and says:

That he/she is the Clerk of
THE WEISER SIGNAL AMERICAN, a bi-weekly news-
paper published at Weiser, in the County of Washington
and State of Idaho; that said paper has been and is in
general circulation in the county aforesaid, and in the
vicinity of Weiser; that the advertisement, a copy of which
is attached hereto, was published in said newspaper once a
week for two consecutive weeks in the regular and
entire issue of said paper during the period and time of
publication, and was published in the newspaper proper
and not in a supplement; that said paper has been estab-
lished and regularly published for more than seventy-eight
consecutive weeks prior to the date of first publication of
said advertisement.

Such notice was published in the issue beginning with
March 5 2009, and ending
with the issue of March 12 2009

Sarah Boles

Fees \$ 104.45

Subscribed and sworn to before me this
day of March

Judith A. Parsons
Notary Public, residing at Weiser, Idaho

My commission expires 2, 14

No. 349

The following application(s) have been filed to appro-
priate the public waters of the State of Idaho:

67-14979

CITY OF WEISER

55 W. IDAHO ST

WEISER ID 83672

Point(s) of Diversion L1 (SESW) S32 T11N R05W

WASHINGTON County Source GROUND WATER

Tributary To WEISER RIVER

Use: RECREATION STORAGE 01/01 To 12/31 18 AFA

Total Diversion: 18 AFA

Date Filed: 10/20/2008

Place Of Use: RECREATION STORAGE

T11N R05W S32 SESW Lot 1

Remark: Use is for a community fishing pond just up-
stream from the mouth of the Weiser River. Permits
will be subject to all prior water rights. Protests may be
submitted based on the criteria of Sec 42-203A, Idaho
Code. Any protest against the approval of this applica-
tion must be filed with the Director, Dept. of Water
Resource, Western Region, 2735 Airport Wy, Boise ID
83705 together with a protest fee of \$25.00 for each
application on or before 03/23/2009. The protestant
must also send a copy of the protest to the applicant.

DAVID R. TUTHILL, JR., Director
Published on March 4th & 11th, 2009..

10-2S

✓ OK DB 4-9-09